

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

MICHAEL P. MULLEN,

Plaintiff,

v.

DEPARTMENT OF VETERAN AFFAIRS,

Defendant.

Case No. 2:23-cv-3

HON. JANE M. BECKERING

**OPINION AND ORDER**

Plaintiff, proceeding pro se, initiated this action, which arises out of his employment by Defendant. Defendant filed a motion to dismiss under Rule 12(b)(6) and 12(b)(1) of the Federal Rules of Civil Procedure, or, alternatively, for summary judgment under Rule 56. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that this Court grant the motion and dismiss Plaintiff's Complaint. The matter is presently before the Court on Plaintiff's "reply" to the Report and Recommendation, which was docketed as his Objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

The Magistrate Judge recommends that this Court grant Defendant's motion because (1) Plaintiff has failed to state a claim for relief upon which relief may be granted for a claim under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680; (2) Plaintiff has failed to plead an actionable negligence claim that could be brought against the United States under the FTCA; and

(3) this Court lacks subject-matter jurisdiction where Plaintiff's Complaint fails to state a federal cause of action against the United States (R&R, ECF No. 15 at PageID.146).

This Court's Local Civil Rule 72.3(b) provides that "[a]ny party may object to a magistrate judge's proposed findings, recommendations or report within fourteen (14) days after being served with a copy thereof unless a different time is prescribed by the magistrate judge or a district judge." W.D. Mich. LCivR 72.3(b). "Such party shall file and serve written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections." *Id.*

In his submission at bar, Plaintiff asserts that several staff persons at the Oscar G. Johnson Veterans Administration Medical Center (VAMC) in Iron Mountain, Michigan violated his "14th amendment rights to procedural due process by not following laws, rules and regulations," which he delineates in his Objections (ECF No. 18 at PageID.164, 164–174). Plaintiff fails to reference the Magistrate Judge's analysis, let alone demonstrate any factual or legal error by the Magistrate Judge therein. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. Additionally, a Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Therefore:

**IT IS HEREBY ORDERED** that the Objections (ECF No. 18) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 15) is APPROVED and ADOPTED as the Opinion of the Court.

**IT IS FURTHER ORDERED** that Defendant's motion to dismiss, or, alternatively, for summary judgment (ECF No. 5) is GRANTED.

Dated: January 26, 2024

/s/ Jane M. Beckering  
JANE M. BECKERING  
United States District Judge